

IN THE  
**Supreme Court of the United States**

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ALL SAINTS' EPISCOPAL CHURCH (FORT WORTH),  
PETITIONER,

v.

THE EPISCOPAL DIOCESE OF FORT WORTH, ET AL.,  
RESPONDENTS.

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THE EPISCOPAL CHURCH, ET AL., PETITIONERS,

v.

THE EPISCOPAL DIOCESE OF FORT WORTH, ET AL.,  
RESPONDENTS.

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**On Petitions for Writ of Certiorari  
to the Supreme Court of Texas**

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**BRIEF OF *AMICI CURIAE* GENERAL ASSEMBLY OF THE  
PRESBYTERIAN CHURCH (U.S.A.), GENERAL SYNOD OF  
THE REFORMED CHURCH IN AMERICA, GENERAL COUNCIL  
ON FINANCE AND ADMINISTRATION OF THE UNITED  
METHODIST CHURCH, MORAVIAN CHURCH IN AMERICA,  
GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST IN  
SUPPORT OF PETITIONERS**

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## INTEREST OF AMICI CURIAE

Amici are religious organizations and representatives who serve religious institutions and individuals.<sup>1</sup> Amici support strong religious liberty protections. Our perspective embraces free exercise and no establishment values. We believe that deference to religious organizations' decisions regarding internal structure, organization, and hierarchy is paramount to maintaining religious liberty and separation of church and state.

Amicus Curiae **General Assembly of the Presbyterian Church (U.S.A.)** is the highest legislative and interpretive body of the Presbyterian Church (U.S.A.). The Presbyterian Church (U.S.A.) is a national Christian denomination with over 1,760,000 members in more than 10,000 congregations, organized into 171 presbyteries under the jurisdiction of 16 synods. Through its antecedent religious bodies, it has existed as an organized religious denomination within the current boundaries of the United States since 1706. The General Assembly is the final point of decision in all disputes. The views expressed in this brief are consistent with hundreds of years of Presbyterian Church (U.S.A.) understanding of con-

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<sup>1</sup> Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), all parties have consented to the filing of this brief. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of intent to file this brief.



nectional churches and the religious trust inherent in its polity.

Amicus Curiae **General Synod of the Reformed Church in America** is the highest assembly and judicatory in the Reformed Church in America. The Reformed Church in America traces its history in North America to 1628, and as a result is the oldest protestant denomination in North America with a continuous history. There are approximately 800 churches in the United States and Canada. These churches are assembled into 47 regional units (each called a classis), and the 47 classes are assembled into 8 regional units (each called a regional synod). The Book of Church Order of the Reformed Church in America provides that the General Synod exercises “a general superintendence over the interests and concerns of the whole church” and “an appellate supervisory power over the acts, proceedings, and decisions of the lower assemblies.” The Book of Church Order also specifically grants to the General Synod the exclusive authority to determine denominational policy, and also designates the General Synod as the final judicatory for all judicial matters that are filed at the classis or regional synod levels.

Amicus Curiae **General Council on Finance and Administration of The United Methodist Church** (“GCFA”) is the financial and administrative arm of The United Methodist Church. Under United Methodist polity, GCFA is the agency charged with protecting the legal interests of the denomination. The United Methodist Church is a worldwide religious denomination with approximately 13,000,000 members. Through its various

agencies, it performs mission work in more than 165 countries. The United Methodist Church has approximately 33,000 local churches and over 7,400,000 members in the United States. There are approximately 720,000 United Methodist members and 1,760 United Methodist local churches in the state of Texas alone. United Methodist polity, as set forth in *The Book of Discipline of The United Methodist Church* (2016), does not permit the pastor or members of a local church who choose to leave the denomination to take the local church's real or personal property with them. This fundamental principle is inextricably linked to other important aspects of its polity.

Amicus Curiae **Moravian Church in America** is a Protestant denomination that has stood for basic religious principles for more than 500 years. Through these years, the church has often put into written form the precepts of its faith and practice in what is known as the Covenant for Christian Living. The Northern Province of the Moravian Church in America, headquartered in Bethlehem, Pennsylvania, counts nearly 21,000 members in 85 congregations in 13 states in the United States and two Canadian provinces. The Southern Province, headquartered in Winston-Salem, North Carolina, includes nearly 16,000 members in 55 congregations.

Amicus Curiae **General Synod of the United Church of Christ** is the representative body of the denomination of the United Church of Christ, a Protestant denomination with more than 800,000 members and nearly 5,000 churches. The General Synod has consistently spoken on issues of religious liberty and the separation of church and state, re-

solving to “share the blessings of our heritage of religious freedom, and to sustain that precious heritage by extending the right of religious freedom to groups with which we are not in theological agreement,” as well as urging the restoration of religious liberty for all, recognizing that “the United Church of Christ, a denomination devoted to religious liberty” must “raise its voice in protest” when religious freedom is abrogated.

Amici hold differing views regarding religious government, hierarchy, organization, and structure, yet we all respect the right of religious institutions to maintain and practice their own religious tenets, including how to structure and govern our religious groups. Amici are committed to protecting religious autonomy to make those decisions free from court and state interference.

## INTRODUCTION AND SUMMARY OF ARGUMENT

“[T]he First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.” *Jones v. Wolf*, 443 U.S. 595, 602 (1979). Before *Jones*, the Court protected this First Amendment religious liberty by requiring courts to defer to the church’s own resolution of its property disputes. But, in *Jones*, the Court decided that other approaches were also permissible under the First Amendment. According to the Court, “a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.” *Id.*

The *Jones* Court expressly endorsed an alternative approach that it called the “neutral-principles approach.” *Id.* Under this approach, courts may adjudicate church-property disputes so long as they apply only “neutral principles of law” and interpret deeds and religious documents “in purely secular terms.” *Id.* at 602, 604. “The primary advantages of the neutral-principles approach,” the Court explained, “are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity.” *Id.* at 603. Indeed, according to the Court, the neutral-principles approach “promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.” *Id.*

The decision below demonstrates that the neutral-principles approach has not fulfilled that promise. State courts have taken widely divergent approaches in deciding church-property disputes based on purportedly neutral principles of law. As a result, some courts still provide substantial deference to a church’s internal resolution of property disputes, while other courts afford virtually no deference to the church’s views. But regardless of how courts interpret *Jones*, one thing is apparent: The neutral-principles approach has not allowed courts to adjudicate church-property disputes free from entanglement in questions of religious doctrine and polity.

I. The Court should resolve the split of authority on how to apply the neutral-principles approach to church-property disputes. In *Jones*, the Court instructed churches that they could “ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members”

by adopting “appropriate reversionary clauses and trust provisions.” 443 U.S. at 604. But in many state courts, these trust clauses do not provide the protection that *Jones* intended because the courts decline to enforce any trust clause that does not meet the formalities of state law.

A. The issue has broad importance for all religious organizations. The petitions address the split of authority among courts interpreting the Episcopal Church’s trust clause. But the Episcopal Church is not alone in this regard. The denominations of two amici—the Presbyterian Church (U.S.A.) and The United Methodist Church—also have trust clauses that some state courts have enforced and others have not. Moreover, this issue is important to all churches—regardless of whether they have trust clauses—because courts have increasingly applied *Jones*’s neutral-principles approach to broader issues of denominational governance and membership.

B. The enforceability of trust clauses is important because those clauses reflect beliefs fundamental to a denomination’s identity. *Jones* instructed churches to adopt trust provisions to ensure how property disputes would be decided, but for many religious groups, a trust provision is not merely a way to avoid protracted litigation—it embodies core religious beliefs. For example, The United Methodist Church has a trust provision that dates back to the Eighteenth Century and to the church’s founder, John Wesley. It embodies the church’s belief that local churches in the denomination do not stand alone, but are connected together. When courts refuse to enforce such provisions, they do more than simply invalidate a

contractual covenant. They infringe on the church's religious liberty.

II. The Court should reconsider the neutral-principles approach. The Court's endorsement of that approach in *Jones* departs from its decisions both before and after *Jones*, which require deference on issues of religious doctrine or polity. The neutral-principles approach has led to much confusion regarding whether a church's trust clause will be enforced, and the same clause is frequently deemed enforceable in some states but not in others. Rather than permit this uncertainty to remain, the Court should grant the petitions and reconsider or clarify the neutral-principles approach.

## ARGUMENT

### I. **The Enforceability of Trust Provisions Is an Important, Recurring Question That Warrants This Court's Review.**

In *Jones*, the Court instructed denominations that they could avoid judicial scrutiny of church-property disputes by adopting express trust provisions in favor of the general church—a step that the Court thought would impose only a minimal burden. *Jones*, 443 U.S. at 606. But that has not been amici's experience. Some courts have interpreted the neutral-principles approach to require a denomination's trust clause to meet the formalities of state law, flouting the deference demanded by the First Amendment. Denominations that rely on trust clauses have been substantially burdened by the inconsistency and unpredictability of how courts in-

interpret their trust clauses in resolving property disputes.

**A. The Split of Authority Affects All Churches, Including Amici.**

The Texas Supreme Court’s refusal to enforce the Episcopal Church’s express-trust provision deepened an existing split of authority on whether courts should give effect to the “Dennis Canon.” *See* Pet. for Writ of Cert., No. 20-536, at 17–22. But the impact of the decision below extends well beyond the property dispute it resolved. The differing approaches to interpreting express-trust provisions have also led courts to take conflicting positions on other churches’ express-trust provisions, including those of the denominations of two amici. And all amici are affected by the decision because courts’ application of the neutral-principles approach in property disputes can influence the resolution of other intra-denomination disputes.

1. Like the Episcopal Church, the denominations of two amici—the Presbyterian Church (U.S.A.) and The United Methodist Church—have express-trust provisions that have been the subject of litigation in numerous state courts. That litigation has also led to conflicting decisions on whether the provisions are enforceable.

In 1983, four years after *Jones*, the Presbyterian Church (U.S.A.) added a trust clause to its constitution, explicitly codifying the church’s longstanding view that “[a]ll property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.) . . . is held in trust nevertheless for the use and benefit of the

Presbyterian Church (U.S.A.).” PRESBYTERIAN CHURCH (U.S.A.), BOOK OF ORDER, G-8.0201 (today found at G-4.0203). Despite the clarity of this provision, courts have not consistently enforced it.

Some state courts have declined to enforce the trust on the ground that it is insufficient to create a valid trust under that state’s law. For example, the Supreme Court of Mississippi held that, under Mississippi law, “no express or implied trust existed” between the national denomination and the local church because the deeds for the local property lacked the requisite trust language and because no separate trust instrument existed in writing. *Presbytery of St. Andrew v. First Presbyterian Church PCUSA of Starksville*, 240 So. 3d 399, 406 (Miss. 2018). That decision is not an outlier. Intermediate appellate courts across the country have also ruled against the Presbyterian Church (U.S.A.) in property disputes because its trust clause did not meet the requirements of their particular state’s laws.<sup>2</sup>

In contrast, other state courts have given effect to this trust provision. Some courts have enforced the trust by affording broad deference to the church’s right to control its property, while others have enforced the provision only after determining that it satisfies state law. For example, the Supreme Court

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<sup>2</sup> See, e.g., *Heartland Presbytery v. Gashland Presbyterian Church*, 364 S.W.3d 575 (Mo. Ct. App. 2012); *Colonial Presbyterian Church v. Heartland Presbytery*, 375 S.W.3d 190 (Mo. Ct. App. 2012); *Carrollton Presbyterian Church v. Presbytery of S. Louisiana of Presbyterian Church (USA)*, 77 So. 3d 975 (La. App. 1 Cir. 2011); cf. *Windwood Presbyterian Church, Inc. v. Presbyterian Church (U.S.A.)*, 438 S.W.3d 597 (Tex. App. 2014).



of Georgia has given appropriate regard to the denomination's trust clause in resolving a church-property dispute. See *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 719 S.E.2d 446 (Ga. 2011). According to the court, "the fact that a trust was not created under our state's generic express (or implied) trust statutes does not preclude the implication of a trust on church property under the neutral principles of law doctrine." *Id.* at 454.<sup>3</sup> Rather than looking to state law, the court focused on "the specific language of the governing documents adopted by the local and general churches," *id.* at 458, and the fact that the local church decided to affiliate with the Presbyterian Church (U.S.A.) after its Book of Order contained the trust clause, see *id.* at 456. The Supreme Court of Oregon reached the same result, but it did so only after scrutinizing the trust provision under Oregon law, including the state's rules on indicating intent to create a trust and on the revocability of a trust. See *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)*, 291 P.3d 711, 722–27 (Or. 2012).

The United Methodist Church finds itself in a similar position. Its trust clause has been included in

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<sup>3</sup> The court observed that if a hierarchical denomination were required to fully comply with Georgia's generic express trust statute, then an "enormous number of deeds and corporate charters would need to be examined and re-conveyed or amended; the burden on the parent churches, the local churches that formed the hierarchical denominations and submitted to their authority, and the free exercise of religion by their members would not be minimal but immense." *Id.* at 453.

the church’s Book of Discipline since at least 1797, and its language is crafted from the explicit instructions of John Wesley, the founder of the Methodist movement.<sup>4</sup> The current version of the trust provides that “titles to all real and personal, tangible and intangible property held at general, jurisdictional, annual, or district conference levels, or by a local church or charge . . . shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline.” THE BOOK OF DISCIPLINE OF THE UNITED METHODIST CHURCH ¶ 2501 (2016).<sup>5</sup>

This trust provision has also generated conflicting decisions regarding its enforceability. For example, the Supreme Court of Alabama declined to enforce this trust provision in a church-property dispute. See *Haney’s Chapel United Methodist Church v. United Methodist Church*, 716 So. 2d 1156 (Ala. 1998). But the Supreme Court of Delaware and the Supreme Court of Alaska both ruled in favor of the national denomination in similar disputes. See *St. Paul Church, Inc. v. Bd. of Tr. of Alaska Missionary Conference of United Methodist Church, Inc.*, 145 P.3d 541 (Alaska 2006); *E. Lake Methodist Episcopal Church, Inc. v. Tr. of Peninsula-Delaware Annual Conference of United Methodist Church, Inc.*, 731 A.2d 798 (Del. 1999).

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<sup>4</sup> See Gen. Council on Fin. and Admin., *The Trust Clause: Questions And Answers For United Methodists*, THE UNITED METHODIST CHURCH 2, <https://www.gcfa.org/media/1444/trust-clause-brochure.pdf>.

<sup>5</sup> The Book of Discipline also sets forth specific trust language to be included in all local church property deeds. See *id.* at ¶ 2503(2)–(3), (6).

2. While not all amici rely on trust clauses, all are affected by the decision below and the experiences of the Presbyterian Church (U.S.A.) and The United Methodist Church. That is because the reasoning of these decisions has not been confined to property-dispute cases. That non-deferential approach, under the guise of applying “neutral principles,” also dictates how many courts decide other issues relating to church governance.

Courts have also split on whether to defer to a religious denomination’s choice regarding who governs or represents the denomination and whether a contested faction is considered part of the denomination. *See* Pet. for Writ of Cert., No. 20-536, at 25–29. These questions involve subjective doctrinal judgments and implicate important religious, spiritual, and polity questions. *Jones*’s pronouncement that courts must “defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization,” 443 U.S. at 602, is equally important to these inquiries.<sup>6</sup>

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<sup>6</sup> Irrespective of the trust clause, *Jones* was remanded to determine which faction in a divided church should be recognized as the true church. *See* 443 U.S. at 608 (noting that “there are at least some indications that under Georgia law the process of identifying the faction that represents the Vineville church involves considerations of religious doctrine and polity”). Here, the Episcopal Church asserted that the true church was the group affiliated with it, and All Saints voted to remain affiliated with the Episcopal Church. *See* Pet. for Writ of Cert., No. 20-534, at 10. The court below incorrectly ignored that church’s views, even though these determinations raise questions of identity, connection, and theology.

Many courts have followed this precept, holding that courts must defer to a church's determination regarding its own hierarchy and leadership, even if that determination contradicts state law.<sup>7</sup> Yet many other courts have taken a different approach, interpreting *Jones* to allow extensive inquiry into religious polity through the purported neutral-principles approach.<sup>8</sup>

A case involving amicus the General Synod of the Reformed Church in America's denomination provides a good example. See *Classis of Cent. California v. Miraloma Cmty. Church*, 99 Cal. Rptr. 3d 449 (Cal. Ct. App. 2009). In that case, a California court invoked *Jones* to apply the neutral-principles approach to determine whether a local congregation had properly disaffiliated from the church. *Id.* at 456. In so doing, the court explained that "[a]lthough this appeal does not involve issues of title to or ownership of property, the same rationale for applying neutral principles of civil law [from *Jones*] should apply to

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<sup>7</sup> See, e.g., *Harris v. Matthews*, 643 S.E.2d 566, 571 (N.C. 2007) (declining to review denomination's internal governance dispute because "in order to address plaintiffs' claims, the trial court would be required to interpose its judgment as to both the proper role of these church officials and whether each expenditure was proper in light of Saint Luke's religious doctrine and practice. . . . This is precisely the type of ecclesiastical inquiry courts are forbidden to make.").

<sup>8</sup> See, e.g., *Aldrich ex rel. Bethel Lutheran Church v. Nelson ex rel. Bethel Lutheran Church*, 859 N.W.2d 537, 541 (Neb. 2015) (holding that court could review local church's decision to leave the larger denomination because "the issue presented by this litigation can be decided by examining state statutes and church governance and other relevant documents and using neutral principles of law").

nonecclesiastical issues of organizational governance.” *Id.* Although the court ultimately reached the correct conclusion under Reformed Church doctrine, it did so only after disregarding principles of deference and conducting an extensive inquiry into Church polity. *Id.* at 459 (“[I]n construing the corporate documents we may also refer to the national church’s constitution, canons and the like.”).

As this case illustrates, courts have strayed from the deferential standard demanded by the First Amendment, leaving amici to deal with the consequences of inconsistent decisions. The Court’s review is urgently needed.

**B. The Question Is Important Because It Impacts Beliefs Fundamental to a Denomination’s Identity.**

In *Jones*, the Court suggested that churches could effectively contract out of the new neutral-principles approach by adopting express-trust provisions. *See* 443 U.S. at 606. This approach would not violate free exercise rights, in the Court’s view, because it would not be burdensome. *Id.* Four decades of experience have shown otherwise. For churches, trust provisions are not merely another boilerplate covenant to include in their constitutions. They reflect beliefs fundamental to a denomination’s identity, structure, polity, religious teachings, and doctrine. And courts’ unwillingness to enforce those trust provisions significantly interferes with free exercise rights.

When amicus the Presbyterian Church (U.S.A.) added a trust clause to its constitution, it did so by codifying the Church’s traditional position on ownership of church property. The Church explained that

it had incorporated a trust clause in its Book of Order to safeguard its “understanding of the church as a communion of saints across time, with responsibilities both to those who came before and those who will follow.”<sup>9</sup> Put another way, the trust clause protects the Church’s “theological conviction that this denomination constitutes one indivisible body, which itself is part of the body of Christ, and which encompasses not only the visible Church today but also the one, holy, catholic, and apostolic Church of our heirs and forbearers.”<sup>10</sup>

Similarly, the trust clause used by The United Methodist Church has existed for centuries and traces its roots back to John Wesley.<sup>11</sup> The Church believes in the principle of “connectionalism,” which it defines as “the principle that local churches in [the] denomination do not ‘stand alone’ but are ‘connected together.’”<sup>12</sup> In practice, this principle means that United Methodist pastors are not assigned to a particular church for their entire career, but instead move from church to church by appointment from the area bishop.<sup>13</sup> It also means that United Methodists can go into any one of the denomination’s 33,000 lo-

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<sup>9</sup> *Advisory Opinion: The Trust Clause and Gracious Separation: Implementing the Trust Clause for the United of the Church, PRESBYTERIAN CHURCH (U.S.A.)* 1 (2014), [https://www.pcusa.org/site\\_media/media/uploads/oga/pdf/advisory-opinion\\_19.pdf](https://www.pcusa.org/site_media/media/uploads/oga/pdf/advisory-opinion_19.pdf) (internal quotation marks omitted).

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *See* Gen. Council on Fin. and Admin., *supra* note 4, at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *See id.*

cal churches in the United States and find a community of faith that shares the same central principles.<sup>14</sup> The trust clause not only furthers the connectionalism principle, it is “indispensable to the fundamentally connectional character of The United Methodist Church.”<sup>15</sup> As the Church has stated, “through the trust clause, we truly become United Methodists, all bound together with a common vision and mission in the service of our Lord.”<sup>16</sup>

Decisions applying *Jones’s* neutral-principles approach to resolve non-property governance issues also impinge on beliefs fundamental to a denomination’s identity. Contrary to many lower courts’ determinations, issues of organizational governance and membership are far from “nonecclesiastical.” *Classis of Cent. California*, 99 Cal. Rptr. 3d at 456. Instead, they are precisely the type of questions denominations should and do decide for themselves. Consider again the litigation involving amicus the General Synod of the Reformed Church in America. *See supra* p. 13. The court resolved the dispute by reference to the governance provisions set forth in the Reformed Church in America’s Book of Church Order. *See Classis of Cent. California*, 99 Cal. Rptr.

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<sup>14</sup> *See id.*

<sup>15</sup> Kathy L. Gilbert, *United Methodist trust clause: Critical amid struggle?* UNITED METHODIST NEWS SERVICE (Feb. 4, 2019), <https://www.umnews.org/en/news/united-methodist-trust-clause-critical-amid-struggle>.

<sup>16</sup> Gen. Council on Fin. and Admin., *supra* note 4, at 3.

3d at 457.<sup>17</sup> But those provisions derive from, and expressly incorporate, religious doctrine and practice.<sup>18</sup> They are fundamental to amicus’s religious autonomy and practice, and should not be subject to state interference.

In short, courts that adjudicate intra-church disputes by purporting to apply neutral principles do not simply resolve disagreements without touching on ecclesiastical matters. Because those governing documents are drafted to reflect the church’s core beliefs, a court’s interpretation of those documents necessarily affects the church’s free exercise rights.

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<sup>17</sup> See also The Reformed Church in America, BOOK OF CHURCH ORDER, <https://www.rca.org/about/government/book-of-church-order>.

<sup>18</sup> See *id.* § 1 (providing that “[t]he classis [higher church body] shall have the authority to supersede a consistory [local leadership] in the administration of a local church when, in its judgment, there are conditions in that church which make it unable to fulfill the functions of a local church as these are defined by the classis. Such conditions shall include . . . [i]nability to provide adequate ministerial services.”); *id.* § 6 (“The classis shall have the authority to reconstitute the consistory of a church when, in the judgment of the classis, sufficient growth has been achieved or suitable stability created so that the church can continue ministry without classis administration.”); *id.* § 4 (“If the classis shall then determine that it is in the best interest of Christ’s Kingdom that the church be allowed to withdraw from the denomination, and to retain all or part of its real and personal property free from any claim on the part of the denomination or any assembly, board or agency thereof, it shall then so declare and proceed promptly to assist the consistory of the church in (1) dissolution of the relationship of the church to the denomination, and (2) transfer of its property to a church of another denomination.”).



## II. The Court Should Reconsider the Neutral-Principles Approach.

The Court should also grant the petitions to reconsider or clarify *Jones*'s neutral-principles approach to ensure that it sufficiently protects the First Amendment rights of churches and their members.

The Court's decision in *Jones* is out of step with the rest of the Court's First Amendment religion cases. A long line of cases—decided both before and after *Jones*—have protected First Amendment rights by “severely circumscrib[ing] the role that civil courts may play” in intra-church disputes. *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). *Jones* marks an unwarranted departure from that line of cases.

The Court first held that courts should defer to a church's decision on ecclesiastical matters in *Watson v. Jones*, 80 U.S. 679 (1872). Although the Court did not rely on the First Amendment, it acknowledged that judicial review of ecclesiastical decisions was a threat to religious liberty. As the Court observed, if the “validity of ecclesiastical decrees would be determined in the civil court,” courts would “deprive these bodies of the right of construing their own church laws.” *Id.* at 733. Moreover, courts should not review questions “of discipline, or of faith, or ecclesiastical rule, custom, or law [that] have been decided by the highest of these church judicatories,” because courts are not “as competent in the ecclesiastical law and religious faith of all these [church] bodies.” *Id.* at 727, 729. Rather, ecclesiastical bodies are “the best

judges of what constitutes an offence against the word of God and the discipline of the church.” *Id.* at 732.

In the decades before *Jones*, the Court reaffirmed *Watson*’s deferential approach and recognized the important role that the First Amendment plays in protecting the church’s liberty to decide issues involving its religion. The Court described *Watson* as “radiat[ing]” “a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). The Court continued to warn about the “hazards” of courts adjudicating church-property disputes, including the risk of “inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern.” *Presbyterian Church in U.S.*, 393 U.S. at 449.

The Court took a different approach in *Jones*. Despite acknowledging that “the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice,” the Court did not require courts to continue deferring to a church’s own decisions. *Id.* at 602 (internal citations omitted). Instead, the Court allowed states to “adopt any one of various approaches for settling church property disputes *so long as it involves no consideration of doctrinal matters*, whether the ritual and liturgy of worship or the tenets of faith.” *Id.* (emphasis added). Under this “neutral principles” approach, deference to the “authoritative

ecclesiastical body” would occur only if “the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy.” *Id.* at 604.

The Court has not extended *Jones*’s neutral-principles approach to all cases involving review of churches’ internal decisions. The Court’s recent ministerial-exception cases demonstrate that point. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 195 (2012); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). In *Hosanna-Tabor*, for example, the Court relied on *Watson*—not *Jones*—to hold that courts must defer to “a church’s determination of who can act as its ministers.” 565 U.S. at 185. And just last Term, the Court again invoked *Watson*—not *Jones*—to reiterate that “the Religion Clauses” require courts to respect “the general principle of church autonomy,” which includes “independence in matters of faith and doctrine and in closely linked matters of internal government.” *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2061.

Especially in light of these recent decisions, *Jones*’s neutral-principles approach has become even more of an outlier in the Court’s Religion Clause jurisprudence. That might not be enough of a reason to reconsider the neutral-principles approach if *Jones* had correctly predicted that it would cause only “occasional problems in application.” 443 U.S. at 604. But that prediction has not come true. As discussed above, *see supra* Part I, *Jones*’s neutral-principles approach has generated much confusion in the lower courts. The result has been that too frequently courts have refused to defer to the church’s resolution of its

own internal disputes. The Court should grant the petitions and reaffirm that the First Amendment demands that courts defer to a church's decision regarding property disputes and other matters of governance and membership.

### **CONCLUSION**

For the foregoing reasons, the petitions for a writ of certiorari should be granted.

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